



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/169991

PRELIMINARY RECITALS

Pursuant to a petition filed November 4, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Douglas County Department of Human Services in regard to Foster Care, a hearing was held on December 16, 2015, at Superior, Wisconsin.

The issue for determination is whether the county agency correctly seeks to revoke the petitioner's foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], Corp. Counsel
Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Douglas County.

2. The county agency notified the petitioner on October 27, 2015, that it was revoking her foster care license as of October 28, 2015, because she allegedly violated Wis. Admin. Code, § DCF 56.07.
3. The petitioner cared for four foster children who were her great-grandchildren. These children were the grandchildren of her daughter [REDACTED] and the children of [REDACTED]'s daughter [REDACTED].
4. The petitioner received an Information for Foster Parents Fact Sheet for each of the foster children. Each sheet listed [REDACTED] and [REDACTED] as prohibited contacts. (It also listed each child's father as a prohibited contact.)
5. Both the petitioner and [REDACTED] signed a Supervised Visitation Agreement on March 5, 2015. The agreement informed the petitioner and [REDACTED] that "because these visits are supervised, the visitation facilitator must be able to always overhear the conversations and interactions between me and my child(ren)."
6. [REDACTED] took the foster to Duluth without the petitioner present.

DISCUSSION

County agencies may revoke a foster home license if the "licensee has substantially and intentionally violated" rules the department promulgated under Wis. Stat. § 48.67. Wis. Stat. § 48.75(1d). Those rules are found in Wis. Admin. Code, Chapter DCF 56. Douglas County seeks to revoke the petitioner's foster care license for allegedly violating several provisions of that chapter. It contends that her foster home exceeded its capacity, she allowed her adult daughter to sleep in the same bed as a foster child, and she allowed her daughter, who has been substantiated for child abuse and neglect, to drive the children across the state line without supervision.

The petitioner denied that her home exceeded capacity or that her daughter slept in the same bed as one of the foster children. These allegations are based upon written statements given to a worker who did not testify, which makes them hearsay within hearsay. They do not fall under the Wis. Stat. § 908.08(6) exception to the hearsay rule for records of regularly conducted activity because the reports were made in anticipation of litigation. The rules of evidence generally do not apply to administrative hearings. Wis. Stat. § 227.45. Nevertheless, administrative decisions cannot be based solely upon uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987). Our state supreme court reinforced this principle in *Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16, a decision that overturned a finding based upon untestified to medical records that were contradicted by petitioner's sworn testimony. The court's rationale is that "the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force." *Id.* at ¶54. The hearsay within hearsay introduced by the agency raises a reasonable suspicion, but it lacks the probative value the agency needs to prove these allegations. Therefore, it cannot revoke her license on these grounds.

The remaining allegation is that the petitioner let her daughter [REDACTED] take the children to Minnesota without the petitioner going along. It contends that by doing so, she violated Wis. Admin. Code, § DCF 56.09(2)(d), which prohibits a licensee from leaving "foster children under 10 years of age without supervision by a responsible care provider."

[REDACTED] is the petitioner's daughter. [REDACTED]'s daughter [REDACTED] is the mother of the foster children. The children were all removed from [REDACTED]'s care. Then on January 25, 2015, the petitioner called the police because [REDACTED] was out of control and threatening her. [REDACTED] then took a knife to her own throat and threatened to kill herself. Although the petitioner calmed [REDACTED] down by the time the police arrived, they arrested her. The children were then placed with the petitioner. On January 28, 2015, the petitioner

received an Information for Foster Parents Fact Sheet for each of her great-grandchildren placed with her. Each sheet listed [REDACTED] and [REDACTED] as prohibited contacts. (It also listed each child's father—there are three separate men—as a prohibited contact.) On March 5, 2015, the petitioner and [REDACTED] signed a Supervised Visitation Agreement, which allowed [REDACTED] to see the children if she was properly supervised. The agreement informed them that “because these visits are supervised, the visitation facilitator must be able to always overhear the conversations and interactions between me and my child(ren).”

Despite these limitations on [REDACTED], at some point in the fall of 2015 she began caring for the children without the petitioner present. Then in October 2015, she took at least some of the children to see someone in the hospital in Duluth, Minnesota, without the petitioner present. [REDACTED] was also there. The petitioner testified that [REDACTED] was doing much better and that someone at the hospital agreed to that the visit was acceptable.

The petitioner struck me as a gentle soul who cares a great deal for her great-grandchildren. But as a foster parent, she is bound by the rules set by the agency. Whether her daughter [REDACTED] was ready to care for children again was simply not a decision that was hers to make. Nor can the decision be made by an unknown hospital worker who may not be familiar with the situation. When the petitioner began caring for her great-grandchildren, she was told in writing that both [REDACTED] and [REDACTED] were prohibited contacts. This means that neither was supposed to see the children. Later, in March, [REDACTED] was allowed supervised visits, but she was never allowed to see the children alone. If the petitioner believed that [REDACTED] no longer needed supervision when seeing the children, she should have discussed this with the county worker who put the restriction in place. Until that worker lifted the restriction and specifically allowed [REDACTED] to see the children when the petitioner was not present, [REDACTED] cannot be considered a responsible care provider. By letting [REDACTED] take the children to Duluth, the petitioner allowed them to be supervised by someone who was not a responsible care giver.

This is a substantial and intentional violation of the foster care rules. The first priority of those rules is to ensure that the best interests of the child are served. This does not occur when a foster parent allows her foster children to be cared for by someone who is only supposed to see the children when she is supervised. This situation is exacerbated when a second person the children are barred from seeing is also present. I assume the petitioner thought that nothing bad would happen if her daughter took the children, but she knew this violated the foster care rules. Because this is a substantial and intentional violation of the foster care rules, the county agency correctly seeks to revoke her foster care license.

I note that the petitioner attempted to get her file from the agency for several weeks but was unable to do so until just before the hearing. I did not receive the file until after the hearing. Because of this, I asked her if she wanted to postpone the hearing, but she declined this offer.

CONCLUSIONS OF LAW

The county agency correctly seeks to revoke the petitioner's foster care license because she substantially and intentionally violated the rule prohibiting her from leaving her foster children without supervision by a responsible care provider.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of February, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 2, 2016.

Douglas County Department of Human Services
DCF - Foster Care